

Hearing Date: July 24, 2019, at 9:30AM (Atlantic Standard Time)
Response Deadline: July 9, 2019 at 4:00PM (Atlantic Standard Time)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

This filing relates to COFINA.

**NOTICE OF HEARING FOR OBJECTION OF
PUERTO RICO SALES TAX FINANCING CORPORATION TO PROOF
OF CLAIM OF ASSURED GUARANTY MUNICIPAL CORP. (CLAIM NO. 31352)**

PLEASE TAKE NOTICE that, on June 12, 2019, the Puerto Rico Sales Tax Financing Corporation (“COFINA”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as COFINA’s representative pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² filed the *Objection of Puerto Rico Sales Tax Financing Corporation to Proof of Claim of Assured Guaranty Municipal Corp. (Claim No. 31352)* (the “Objection”) with the United States District Court for the District of Puerto Rico (the “Court”), seeking to disallow the Proof of Claim No. 31352 filed by Assured Guaranty Municipal Corp.

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA” and together with the Commonwealth, COFINA, HTA, and ERS, the “Debtors”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

PLEASE TAKE FURTHER NOTICE that any response to the Objection must be filed in writing with the Court and must be served upon and received by the undersigned counsel for COFINA by **4:00 p.m. (Atlantic Time) on July 9, 2019.**

PLEASE TAKE FURTHER NOTICE that, in the event that one or more responses to the Objection are timely filed, the Objection shall be considered by The Honorable Laura Taylor Swain, at the United States District Court for the District of Puerto Rico, 150 Carlos Chardón Street, Federal Building, San Juan, Puerto Rico 00918-1767, at **9:30 a.m. (Atlantic Time) on July 24, 2019.**

PLEASE TAKE FURTHER NOTICE THAT, IF NO RESPONSES TO THE OBJECTION ARE TIMELY FILED, SERVED, AND RECEIVED, IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.

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PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these Title III Cases are available (a) free of charge by visiting <https://cases.primeclerk.com/puertorico> or by calling +1 (844) 822-9231, and (b) on the Court's website at <http://www.prd.uscourts.gov>, subject to the procedures and fees set forth therein.

Dated: June 12, 2019
San Juan, Puerto Rico

Respectfully submitted,

/s/ Hermann D. Bauer

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COFINA*

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Title III

No. 17 BK 3283-LTS

(Jointly Administered)

This filing relates to COFINA.

**OBJECTION OF PUERTO RICO SALES
TAX FINANCING CORPORATION TO PROOF OF CLAIM
OF ASSURED GUARANTY MUNICIPAL CORP. (CLAIM NO. 31352)**

The Puerto Rico Sales Tax Financing Corporation (“COFINA”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as COFINA’s representative pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² files this objection (the “Objection”) to the claim (Proof of Claim No. 31352) of Assured Guaranty Municipal Corp. (“Claimant”), and in support of the Objection, respectfully represents as follows:

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA” and together with the Commonwealth, COFINA, HTA, and ERS, the “Debtors”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

JURISDICTION

1. The United States District Court for the District of Puerto Rico has subject matter jurisdiction over this matter pursuant to PROMESA section 306(a).
2. Venue is proper in this district pursuant to PROMESA section 307(a).

BACKGROUND

A. The COFINA Title III Case

3. COFINA is a public corporation and instrumentality of the Commonwealth constituting a corporate and political entity independent and separate from the Commonwealth, created under Act No. 91 of the Legislative Assembly of the Commonwealth.

4. On May 5, 2017 (the “Petition Date”), the Oversight Board, at the request of the Governor, issued a restructuring certification pursuant to PROMESA sections 104(j) and 206 and filed a voluntary petition for relief for COFINA, pursuant to PROMESA section 304(a), commencing a case under Title III thereof (the “COFINA Title III Case”).

5. The Oversight Board filed that certain *Third Amended Title III Plan of Adjustment of the Puerto Rico Sales Tax Financing Corporation* (the “Plan”) [ECF No. 4652]³ on January 9, 2019, and a related *Disclosure Statement for the Second Amended Title III Plan of Adjustment of the Puerto Rico Sales Tax Financing Corporation* [ECF No. 4364] on November 26, 2018. The Court considered confirmation of the Plan and any objections thereto at a hearing on January 16-17, 2019.

6. On February 4, 2019, the Court confirmed the Plan. *See Order and Judgment Confirming the Third Amended Title III Plan of Adjustment of Puerto Rico Sales Tax Financing Corporation* [ECF No. 5048]. On February 5, 2019, the Court issued an *Amended Order and*

³ Unless otherwise stated herein, ECF citations refer to documents filed in Bankruptcy Case No. 17 BK 3283-LTS.

Judgment Confirming the Third Amended Title III Plan of Adjustment of Puerto Rico Sales Tax Financing Corporation [ECF No. 5055] (the “Amended Confirmation Order”). The Plan became effective on February 12, 2019 (the “Effective Date”), when the transactions contemplated therein were consummated. See *Notice of (A) Entry of Order Confirming the Third Amended Title III Plan of Adjustment of Puerto Rico Sales Tax Financing Corporation Pursuant to Title III of PROMESA and (B) Occurrence of the Effective Date* [Case No. 17 BK 3284-LTS, ECF No. 587]. Pursuant to consummation of the Plan, distributions have been made to holders of COFINA bonds, and all other debts owed by COFINA have been discharged.

B. The Bar Date Orders and COFINA Claims

7. On January 16, 2018, the Debtors filed their *Motion for Order (A) Establishing Deadlines and Procedures for Filing Proofs of Claim and (B) Approving Form and Manner of Notice Thereof* [ECF No. 2255] (the “Bar Date Motion”). Pursuant to the *Order (A) Establishing Deadlines and Procedures for Filing Proofs of Claims and (B) Approving Form and Manner of Notice Thereof* [ECF No. 2521] (the “Initial Bar Date Order”), the Court granted the relief requested in the Bar Date Motion and established deadlines and procedures for filing proofs of claim in the COFINA Title III Case. Upon the informative motion of certain creditors, and the support of the Debtors, the Court subsequently entered the *Order (A) Extending Deadlines for Filing Proofs of Claim and (B) Approving Form and Manner of Notice Thereof* [ECF No. 3160] (together with the Initial Bar Date Order, the “Bar Date Orders”), extending the deadline to file proofs of claim against one or more Debtors to June 29, 2018 at 4:00 pm (Atlantic Time).

8. To date, over 168,000 proofs of claim have been filed against the Debtors and logged by Prime Clerk, LLC. Such proofs of claim total approximately \$43.6 trillion in asserted

claims against the Debtors. Of the proofs of claim filed, approximately 3,500 were timely filed in relation to COFINA, totaling approximately \$10.1 trillion in asserted claims. As noted above, as COFINA is and was a special purpose entity with only approximately \$17 billion of funded indebtedness, it was clear that substantially all of such claims were inappropriate.

9. By orders, dated January 31, 2019, February 7, 2019, March 26, 2019, March 27, 2019, and April 2, 2019, and following hearings on January 31, 2019, and March 13, 2019, the Court granted omnibus objections and individual objections related to over 3,100 proofs of claim filed against COFINA, resulting in these proofs of claim being disallowed or reclassified to be asserted against another of the Debtors. Objections to another thirteen claims filed against COFINA currently remain pending before the Court. Additionally, over 350 claims asserted against COFINA have been withdrawn, pursuant to stipulations or notices of withdrawal.

C. Bond Debt Master Proofs of Claim

10. Pursuant to the Initial Bar Date Order, the indenture trustees, fiscal agents, or any similar agent or nominee for each respective series of bonds issued by one of the Debtors may file a master proof of claim against the applicable debtor on behalf of themselves and all holders of bond claims for the respective series of bonds for obligations arising under the respective trust agreements, resolutions, or similar bond documents. Initial Bar Date Order, ¶ 5(a).

11. Pursuant to that certain Amended and Restated Sales Tax Revenue Bond Resolution, adopted on July 13, 2007, as amended on June 19, 2009 (the “COFINA Resolution”), and pursuant to certain supplemental resolutions, COFINA issued a series of bonds in aggregate approximate amount of \$17 billion, to, among other things, defray certain debt obligations of the Puerto Rico Government Development Bank and the Puerto Rico Public Finance Corporation (the “Bonds”). Bank of New York Mellon serves as Trustee with respect to the Bonds.

12. On behalf of the holders of the Bonds, BNYM filed master proofs of claim with respect to the Bonds (each a “Master Proof of Claim” and collectively, the “Master Proofs of Claims”). BNYM filed two proofs of claim logged by Prime Clerk as Proofs of Claim Nos. 31920 (subordinate bonds) and 33139 (senior bonds) and asserting more than \$36 billion in liabilities.⁴

D. Proof of Claim at Issue

13. On or about May 24, 2018, Claimant asserted a claim against COFINA, which was logged by Prime Clerk as Proof of Claim No. 31352 (the “Claim”), with respect to COFINA Bonds that Claimant or its affiliates beneficially hold and/or insure, as the case may be, including for amounts arising from any liabilities, losses, and obligations allegedly owed to Claimant or its affiliates pursuant to the COFINA Resolution. Claimant alleges that the Claim includes secured claims totaling “no less than \$284,942,250,” including claims arising “under the Takings Clauses” and Section 407 of PROMESA, in addition to any interest accruing after the Petition Date, “any contingent unliquidated claims not presently ascertainable,” and “all costs of enforcement, including, without limitation, professionals’ fees arising under” certain insurance agreements. Annex to Claim, ¶ 2.

OBJECTION TO PROOF OF CLAIM

A. Duplicative

14. First, this objection seeks to disallow the Claim as duplicative. Claims that are “unenforceable against the debtor and property of the debtor, under any agreement or applicable law” should be disallowed. 11 U.S.C. § 502(b)(1). Federal Rule of Bankruptcy Procedure 3007(d) sets forth a number of grounds for objecting to claims, including objecting to a duplicate claim

⁴ BNYM initially filed two proofs of claim logged by Prime Clerk as Proofs of Claim Nos. 16284 (subordinate bonds) and 16760 (senior bonds), these were superseded and amended by Proofs of Claim Nos. 31920 and 33139.

under Federal Rule of Bankruptcy Procedure 3007(d)(1). In accordance with these legal principals, COFINA seeks to disallow the Claim as duplicative of one or more Master Proofs of Claim, which, as explained above, were filed in the COFINA Title III Case by BNYM, as trustee of the Bonds issued by COFINA. The Master Proofs of Claim asserted against COFINA any and all amounts owing under the COFINA Resolution. Accordingly, to the extent the Claim seeks recovery on behalf of Claimant or the bondholders it insures for amounts owed under the COFINA Resolution, the Claim is duplicative of one or Master Proofs of Claim. Any failure to disallow the duplicate portions of the Claim will result in Claimant potentially receiving an unwarranted double recovery against COFINA, to the detriment of other stakeholders in the COFINA Title III Case. To the extent the Claim is duplicative, Claimant will not be prejudiced by the disallowance of the Claim because the Claim is subsumed within one or more Master Proofs of Claim.

B. Satisfied

15. Federal Rule of Bankruptcy Procedure 3007(d)(5) provides for the disallowance of claims that have been “satisfied or released during the case in accordance with the [Bankruptcy] Code, applicable rules, or a court order.” Article X of the Plan provided for the treatment of certain bondholder claims insured by Claimant, which were entitled to receive certain payments “in full satisfaction, release and exchange of such holder’s Allowed Junior COFINA Bond Claim (Assured) and the Assured Insured Bonds giving rise to Junior COFINA Bond Claims (Assured).”⁵ Such treatment of bondholder claims insured by Claimant was confirmed by the Court upon

⁵ The capitalized terms are defined in Article I of the Plan. Section 1.17 defines the term “Allowed Junior COFINA Bond Claim (Assured)” as a “Junior COFINA Bond Claim (Assured), to the extent it is or has become an allowed Claim.” Plan, Art. I, § 1.17. Pursuant to Section 1.112 of the Plan, a Junior COFINA Bond Claim is a “Bond Claim on account of a ‘First Subordinate’ Existing Security, the scheduled repayment of which has been insured by Assured in accordance with the terms of the Assured Insurance Policies, including pursuant to a secondary market insurance policy.” *Id.*, Art. I, § 1.112. The “Assured Insured Bonds” are the “‘First Subordinate’ Existing Securities issued by COFINA and insured by Assured, including, without limitation, those securities insured by Assured through insurance issued in the secondary market.” *Id.*, Art. I, § 1.34.

entering the Amended Confirmation Order, and, upon the Effective Date, distributions have been made in accordance with the Plan. Thus, to the extent the Claim seeks recovery for liability associated with claims or amounts that have already been provided for in the Plan, the Claim should be disallowed as satisfied in accordance with the Plan and Amended Confirmation Order.

C. Released and Discharged

16. Similarly, any non duplicate portion of the Claim that has not already been satisfied should be disallowed as released and discharged in accordance with the Bankruptcy Code, Plan, and Amended Confirmation Order. Under Section 944 of the Bankruptcy Code, incorporated into PROMESA by PROMESA § 301(a), a debtor is discharged from all debts as of confirmation, regardless whether a creditor has accepted the plan. 11 U.S.C. § 944; *see also Barraford v. T & N Ltd.*, 778 F.3d 258, 261 (1st Cir. 2015) (holding that, in Chapter 11, the debtor “receives a discharge of liability for the claims” upon plan confirmation); 6 COLLIER ON BANKRUPTCY ¶ 944.03 (same in Chapter 9). Paragraph 29 of the Amended Confirmation Order also provides that “all distributions and rights afforded under the Plan shall be, and shall be deemed to be in exchange for, and in complete satisfaction, settlement, discharge and release of, all Claims or Causes of Action against COFINA that arise, in whole or in part, prior to the Effective Date, relating to COFINA . . . including any interest accrued on such Claims from and after the Petition Date” Amended Confirmation Order, ¶ 29(a).⁶ Furthermore, the Amended Confirmation Order provides that, “[u]pon the Effective Date, COFINA and Reorganized COFINA shall be

⁶ Pursuant to the Plan, “Claim” is defined as “[a]ny right to payment or performance, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, known or unknown or asserted or unasserted; or any right to an equitable remedy for breach or enforcement of performance, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, and all debts, suits, damages, rights, remedies, losses, liabilities, obligations, judgments, actions, causes of action, demands, or claims of every kind or nature whatsoever, in law, at equity, or otherwise.” Plan § 1.53.

deemed discharged and released from any and all Claims, Causes of Action and any other debts that arose, in whole or in part, prior to the Effective Date” Amended Confirmation Order, ¶ 29(a). The Plan has been confirmed; the Claim was filed prior to the Effective Date; and the Claim asserts claims and causes of action against COFINA that arose prior to the Effective Date. Accordingly, any amount of the Claim not already satisfied has been released and discharged, pursuant to Paragraph 29 of the Amended Confirmation Order and 11 U.S.C. § 944. Because the Claim as a whole is either duplicative, satisfied, or released and discharged, the Claim should be disallowed in its entirety.

RESERVATION OF RIGHTS

17. This Objection is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of COFINA to object to the Claim or any other claim on any ground whatsoever. COFINA expressly reserves all further substantive or procedural objections. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any claim against COFINA; (b) a waiver of COFINA’s right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (e) a waiver of COFINA’s rights under PROMESA, the Bankruptcy Code or any other applicable law.

NOTICE

18. COFINA has provided notice of this Objection to (a) the individual creditor subject to this Objection, (b) the U.S. Trustee, and (c) the Master Service List (as defined by the *Order Further Amending Case Management Procedures* [ECF No. 3804]), which is available on the Debtors’ case website at <https://cases.primeclerk.com/puertorico>. COFINA submits that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

19. No prior request for the relief sought in this Objection has been made to this or any other court.

WHEREFORE COFINA respectfully requests entry of an order, substantially in the form of the proposed order attached hereto as **Exhibit A**, (1) granting the relief requested herein, and (2) granting COFINA such other and further relief as is just.

Dated: June 12, 2019
San Juan, Puerto Rico

Respectfully submitted,

/s/ Hermann D. Bauer

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/s/ Martin J. Bienenstock

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*Attorneys for the Financial Oversight and
Management Board as representative for
COFINA*

EXHIBIT A

Proposed Order

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

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No. 17 BK 3283-LTS

(Jointly Administered)

This filing relates to COFINA.

**ORDER GRANTING OBJECTION OF PUERTO
RICO SALES TAX FINANCING CORPORATION TO PROOF OF
CLAIM OF ASSURED GUARANTY MUNICIPAL CORP. (CLAIM NO. 31352)**

Upon the *Objection of Puerto Rico Sales Tax Financing Corporation to Proof of Claim of Assured Guaranty Municipal Corp. (Claim No. 31352)* (the “Objection”),² dated June 12, 2019, of the Puerto Rico Sales Tax Financing Corporation (“COFINA”), for entry of an order disallowing in its entirety the claim of Assured Guaranty Municipal Corp. (Proof of Claim No. 31352) (the “Claim”), as more fully set forth in the Objection; and the Court having jurisdiction to consider the Objection and to grant the relief requested therein pursuant to Section 306(a) of PROMESA; and venue being proper pursuant to Section 307(a) of PROMESA; and due and proper notice of the Objection having been provided to those parties identified therein, and no other or further

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² Capitalized terms used but not defined herein shall have the meanings set forth in the Objection.

notice being required; and the Court having determined that the relief sought in the Objection is in the best interest of COFINA, its creditors, and all the parties in interest; and the Court having determined that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Objection is GRANTED as set forth herein; and it is further

ORDERED that the Claim is hereby disallowed in its entirety; and it is further

ORDERED that Prime Clerk is authorized and directed to delete the Claim from the official claims register in the COFINA Title III Case; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____

Honorable Judge Laura Taylor Swain
United States District Judge